

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDREW FETHER,

Plaintiff,

v

HILLSDALE COUNTY, a Municipal Corporation, HILLSDALE COUNTY SHERIFF DEPARTMENT, HILLSDALE COUNTY SHERIFF DEPARTMENT'S DEPUTY KWINN LEVA, in her individual and official capacity, ASSISTANT PROSECUTOR VALERIE WHITE, in her official and individual capacity; MICHIGAN STATE POLICE TROOPERS THOMAS HURST, CYNTHIA GOCHANOUR, and TONY CUEVAS, and MICHIGAN STATE POLICE SEX OFFENDER REGISTRY ANALYSTS MELISSA MARINOFF, and MARCI KELLY, in their individual capacities,

Defendants.

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STATE DEFENDANTS'
PRE-MOTION CONFERENCE REQUEST

Plaintiff, Andrew Fether, was formerly in the military when a fellow servicemember reported that he had child pornography on his laptop. Plaintiff was

investigated but no contraband was found. However, the law enforcement information network (LEIN) indicated that Plaintiff had a conviction for possession of child pornography and Plaintiff was added to the Sex Offender Registry. Ultimately, Plaintiff was criminally charged twice over his failure to register as a sex offender and he pled *nolo contendere* both times. Plaintiff's Complaint is filed under 42 U.S.C. § 1983 and alleges violations of the Fourteenth Amendment of the United States Constitution against the State Defendants.

The State Defendants are employees of the Michigan State Police. The State Defendants file this pre-motion conference request in order to move for dismissal based on Plaintiff's failure to state a claim, Qualified Immunity, and the statute of limitations.

Beyond a broad and conclusory statement that Fether was a "class of one" because he was innocent, Plaintiff fails to allege that he was sufficiently a member of the "class of one" and does not identify any specific individuals that were not discriminated against as alleged in the Complaint. As such, his allegations fall short of the minimal pleading standards. Fed. R. Civ. P. 8. Because Fether has failed to show a proper "class of one", he cannot establish a violation of the Equal Protection Clause and impose liability under § 1983.

Qualified immunity is an affirmative defense against a § 1983 claim. *Noble v. Schmitt*, 87 F.3d 157, 160 (6th Cir. 1996). The doctrine of qualified immunity, "shields 'governmental officials performing discretionary functions . . . from civil damages liability as long as their actions could reasonably have been thought

consistent with the rights they are alleged to have violated.” *Solomon v. Auburn Hills Police Dep’t*, 389 F.3d 167, 172 (6th Cir. 2004) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). Government officials are immune from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Fether has not sufficiently alleged a violation of a clearly established constitutional right that was done by the State Defendants.

Lastly, Plaintiff’s Complaint is time-barred. Fether was criminally charged on August 15, 2011, and July 30, 2014. (R. 1, ¶35, 47). The time of the charges should have provided Fether with notice of the injuries alleged here. Thus, an action premised upon these criminal charges and actions should have been commenced no later than July 30, 2017, no matter the theory of liability under 42 U.S.C. § 1983.

Wherefore, the State Defendants request this Court allow them to file a motion to dismiss in this matter to avoid unnecessary further litigation.

Respectfully submitted,

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Attorney General

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Dated: February 13, 2018

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2018, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record, as well as via U.S. Mail to Plaintiff.

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